

Internal Revenue Service, Treasury

§ 31.3503-1

Q-8a: May an employer withhold amounts attributable to noncash fringe benefits on the basis of average wages as permitted under section 3402(h)(1)?

A-8a: In general, yes. In estimating wages under section 3402(h)(1)(A), however, the employer must take into account estimated business use of the benefit (such as an employer-provided road vehicle). In no event, however, may the amount reported by the employer as “wages” for any employee for any quarter be based on an estimation. However, the rules in Q/A-1 of this section regarding permissible delays in actual withholding apply.

Q-9: If an employee purchases any property or service from an employer at a discount and the discount is not excludable under section 132 and any applicable regulations thereunder, when is the noncash fringe benefit provided?

A-9: Such property or service is provided at the time that ownership is transferred, in the case of property, or the time service is rendered, in the case of services. This will be true regardless of when the employee pays for such property or service or the date payment is due or the rate of interest charged prior to payment. The time at which ownership of the property is transferred must be determined under general tax principles.

Q-10: What rules apply with respect to the treatment of the payment of any noncash fringe benefit as the payment of supplemental wages under section 3402?

A-10: An employer may treat the payment of any noncash fringe benefit as the payment of supplemental wages. Thus, if noncash fringe benefits are provided and tax has been withheld from the employee's regular wages, the employer may determine the tax to be withheld with respect to such noncash fringe benefits by using a flat percentage rate of 20 percent, without allowance for exemptions and without reference to any regular payment of wages. For example, assume that during a calendar quarter A receives from his employer a taxable noncash fringe benefit with a fair market value of \$1,000. If the requirements specified above are satisfied, A's employer may determine the tax to be withheld with

respect to such benefit by using a flat percentage rate of 20 percent. The employer may also determine the tax to be withheld with respect to such benefit by use of the method described in § 31.3402 (g)-1(a)(2).

(Approved by the Office of Management and Budget under control numbers 1545-0074 and 1545-0907)

[T.D. 8004, 50 FR 756, Jan. 7, 1985, as amended by T.D. 8009, 50 FR 7046, Feb. 20, 1985]

§ 31.3502-1 Nondeductibility of taxes in computing taxable income.

For provisions relating to the nondeductibility, in computing taxable income under subtitle A, of the taxes imposed by sections 3101, 3201, and 3211, and of the tax deducted and withheld under chapter 24, see §§ 1.164-2 and 1.275-1 of this chapter (Income Tax Regulations). For provisions relating to the credit allowable to the recipient of the income in respect of the tax deducted and withheld under chapter 24, see § 1.31-1 of this chapter (Income Tax Regulations).

[T.D. 6780, 29 FR 18148, Dec. 22, 1964]

§ 31.3503-1 Tax under chapter 21 or 22 paid under wrong chapter.

If, for any period, an amount is paid as tax—

(a) Under chapter 21 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 22 or corresponding provisions of prior law, or

(b) Under chapter 22 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 21 or corresponding provisions of prior law,

the amount so paid shall be credited against the tax for which such person is liable and the balance, if any, shall be refunded. Each claim for refund or credit under this section shall be made on Form 843 and in accordance with § 31.6402(a)-2 and the applicable provisions of section 6402(a) and the regulations thereunder in Part 301 of this chapter (Regulations on Procedure and Administration).